IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.Rev.Pet.No. 1696 of 2005-B

CRA.73/2000 of ADDL. SESSIONS COURT (ADHOC COUR-I), PATHANAMTHITTA
CC.261/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT, THIRUVALLA

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REVN. PETITIONER: APPELLANTS/ACCUSED NOS.1 AND 2:

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1. JIJI MATHEW,
ALUMMOOTTIL HOUSE, KIZHAKKEKKARA MURI,
NEDUMPURAM VILLAGE.

2. JAMES @ JOSE,
ALUMMOOTTIL HOUSE, KIZHAKKEKKARA MURI,
NEDUMPURAM VILLAGE.

BY ADV. SRI.C.S.MANU
SRI.ANOOP JOSEPH
SRI.K.BINNI
SRI.ANOOP.V.NAIR
SRI.ABHILASH AKBAR

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR MR. PUZHAKKARA MUHAMMED

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.M.A.NO. 11198/2005 IN CRL.R.P. NO. 1696/05.

DISMISSED.

29-5-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.1696 of 2005

DATED THIS THE 29th DAY OF MAY 2007

ORDER

The revision petitioners are accused 1 and 2 in C.C.No.261/1995 who stands convicted for the offence under Sections 323, 341 and 379 I.P.C. and sentenced to undergo rigorous imprisonment for one month each for the offence under Section 341, rigorous imprisonment for one month each for the offence under Section 323 IPC and rigorous imprisonment for six months each for the offence under Section 379 I.P.C. The prosecution case is that the accused persons restrained PW1 and his family while they were returning from church on 28-5-1993 at 7 p.m. in the public road and A1 repeatedly beat PW1 on his face near the right eye and the 2nd accused hit PW1 on the side of his right eye that resulted in injuries and PW2, the wife of PW1 was pushed down to the seat of the car and the 2nd accused forcibly removed the double barrel gun which is valued at Rs.9,000/- from the car. A 3 to 6 were acquitted.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 to 14 and Exts.P1 to P10 and Mo.1 gun. The accused examined Dws. 1 and 2. Both of them have supported the prosecution case. Of the occurrence witnesses examined, Pws.4,5 and 7 did not support the prosecution and were treated as hostile. It is the evidence of Pws.1,2 and 3, the de facto complainant, his wife and the driver of PW1, who has testified in support of the prosecution case which was relied on by the courts below. As can be seen from the evidence adduced in the matter, Pws.1 to 3 had no previous acquaintance with the accused. The evidence is that while PW1 and his family accompanied by PW3, the driver was proceeding to the church with PW1 and that PW1 was driving the car. PW1 happened to slow down the car when a vehicle came from the opposite direction and at the time a motor cycle hit on the rear side of the car. The driver got down and examined the car and as there was no damages to the car, they went ahead. After proceeding to a certain distance, a scooter that came from the back, overtook the car and stopped the car by blocking the road. The rider of the scooter and the pillion

rider abused PW1 but the people intervened, but they were able to proceed to the church. After attending the church at about 7 p.m. when they were returning in the car, the same scooter blocked the road and the car had to be stopped. The pillion rider came to the car and beat PW1 on his cheek saying that he had a score to settle. The rider of the scooter also came near the car and he also beat PW1. When his wife tried to intervene, she was pushed away. The MO.1 gun that was kept in the seat of the car was taken away. A1 and A2 were absconding. Subsequently, they were arrested. The gun was recovered on 17-6-1994 on the information received that it was lying on the side of a road.

3. The contention of the counsel for the revision petitioner that PW1 has not identified the accused as such cannot be entertained in view of the evidence brought out in the cross examination. In the cross examination of PW1 he has stated that he has identified A1 from the police station as well. He has also identified the accused in the court. Apart from PW1, Pws.2 and 3 have identified A1 and A2. The rest of the accused could

not be identified. The evidence of Pws.1 to 3 and that the identity of A1 and A2 in the circumstances appears to be credible. There is no delay in lodging the F.I.R. Ext.P18 wound certificate has been proved by PW15, the Doctor who issued the same. The injuries cannot be said to be of a very minor in nature. PW1 is a Doctor by profession. He has sustained sub conjuctival hemorrhage of right eye, multiple abrasions and contusion of forehead. Opthalmologic consultation was advised.

4. In the light of the direct evidence adduced in the matter, I find that the findings of the courts below in this regard is only to be sustained; and the same is confirmed.

So far as the sentence is concerned, the incident has taken place in 1993, i.e.about 14 years ago. It is pointed out that the accused were comparatively young and that they were facing the criminal proceedings so far. It is also pointed out that PW1 is no more. PW1 had undergone only out-patient treatment. In the circumstances and in view of the long delay, I find that imprisonment of the accused is not required at this point of time. The sentence imposed is liable to be modified. The sentence

imposed is modified to imprisonment till the rising of the court and to pay a compensation of Rs.20,000/- each to PW2 and in default to undergo simple imprisonment for six months each. No separate sentence is awarded for the offence under Section 323 IPC. The revision petitioners are granted one month's time to remit the amount of compensation. The revision petitioners shall appear before the Judicial Magistrate of First Class, Thiruvalla on 2-7-2007 to receive sentence. The revision petition is partly allowed.

SD/-

K.R.UDAYABHANU, JUDGE

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